



Federal Aviation Administration
Office Of The Chief Counsel
Office Of Dispute Resolution For Acquisition (ODRA)

Alternative Dispute Resolution Agreement
For Mediation of the Contract Dispute of [Contractor]
Under Contract No. DTFA[] Issued by the FAA [] Region

ODRA Docket No. [__-ODRA-__]

THIS AGREEMENT is entered into by and between the Federal Aviation Administration ("FAA") [] Region (the "Region") and [Contractor's Name] (collectively referred to hereinafter as the "parties").

1. 1. Background

The FAA Office of Dispute Resolution for Acquisition ("ODRA") is independent of FAA organizations responsible for procurement actions. The ODRA has been provided broad discretion by the Administrator of the FAA to promulgate rules of procedure and to utilize a variety of alternative dispute resolution ("ADR") techniques to resolve both procurement protests and contract disputes. Final procedural regulations in the form of a Final Rule under 14 CFR Part 17 were promulgated for both alternative dispute resolution (ADR) by the ODRA as well as the ODRA's Default Adjudicative Process. Those regulations, which govern the ADR effort being undertaken hereunder, were published in the Federal Register on June 18, 1999 and became effective for all protests and contract disputes filed with the ODRA on or after June 28, 1999. The instant contract dispute was filed with the ODRA on [date].

2. 2. Agreement to Mediate

The parties hereby agree to utilize one form of ADR, mediation, in order to attempt to resolve their differences in the instant contract dispute. The parties shall therefore present their respective positions and supporting evidence to a Neutral Mediator, and shall work with him to achieve a settlement of matters in controversy in the contract dispute through direct or indirect negotiation, using the Neutral Mediator to advise and counsel the parties during the process of arriving at a settlement and, as necessary, to convey settlement terms. It is understood that should the parties not be able to arrive at an amicable settlement via mediation, any remaining unsettled matters shall be resolved via the ODRA's Default Adjudicative Process.

3. 3. Designation of Neutral Mediator

The parties hereby agree that the ODRA's [Name] will serve as the Neutral Mediator for purposes of the instant contract dispute.

4. Procedures and Groundrules for the Conduct of The Mediation.

The agreed-upon procedures and groundrules for the conduct of this mediation are set forth in Appendix 1, which is attached hereto and made part of this ADR Agreement. The Neutral Mediator shall have broad discretion to administer those procedures in the interests of efficiency, effectiveness, and a fair resolution of the issues in controversy.

During the pendency of this matter before the Neutral Mediator, the ODRA Director may review the progress of mediation status with the Neutral Mediator, but shall not be privy to the subject matter of any specific settlement terms, unless the parties agree thereto.

In providing any guidance and evaluation of the merits of the case, the Neutral Mediator will apply the principles of the FAA Acquisition Management System and applicable law.

The Neutral Mediator will have broad discretion in recommending compromises, resolutions or advice in arriving at a settlement agreement.

FEDERAL AVIATION ADMINISTRATION: [CONTRACTOR]
_____ REGION

By _____
By _____
_____, Esq., Counsel _____, Esq.,
Counsel

Date: _____ Date: _____

NEUTRAL MEDIATOR

APPROVED:

_____, Esq.
Dispute Resolution Officer
FAA Office of Dispute Resolution
for Acquisition

Anthony N. Palladino, Esq.
Director
FAA Office of Dispute Resolution
for Acquisition

Date: _____

Date: _____



Federal Aviation Administration
Office Of The Chief Counsel
Office Of Dispute Resolution For Acquisition (ODRA)

FEDERAL AVIATION ADMINISTRATION

Office of Dispute Resolution for Acquisition

Appendix 1

to

Alternative Dispute Resolution Agreement

For Mediation of the Contract Dispute of [Contractor]

Under Contract No. DTFA[_____] Issued by the FAA _____ Region

ODRA Docket No. [__-ODRA-00____]

Procedures and Groundrules for Mediation

1. The parties agree to attempt to resolve the dispute by using a Neutral Mediator, who shall assist the parties in reaching the settlement of the dispute by facilitating negotiations between or among them. The Neutral Mediator shall participate impartially in the negotiations, and shall advise and consult with the parties involved.
2. The Neutral Mediator shall have no financial or personal interest in the result of the mediation. A prospective Neutral Mediator shall disclose to the parties and to the FAA Office of Dispute Resolution for Acquisition (ODRA), prior to accepting his or her appointment, any circumstance likely to create a conflict of interest or presumption of bias or to prevent a prompt meeting with the parties. Upon receipt of such information, the ODRA Director, at the request of either party, shall promptly designate a replacement Neutral Mediator – either a member of the ODRA staff or a replacement Compensated Neutral agreeable to all parties.
3. If, during the course of mediation, any Neutral Mediator shall become unwilling or unable to serve, the ODRA Director will appoint another Neutral Mediator, unless the parties agree otherwise.
4. A party shall choose its own representatives for participation in the mediation proceedings. In addition to its legal counsel, each party shall be responsible for designating its principal negotiating representative. The principal negotiating representative shall have authority to enter into a settlement agreement on behalf of his/her party.

5. The following schedule of activities shall apply to the mediation:

Date

Description

**INSERT SCHEDULE OF SUBMISSIONS, AUDIT, AND MEDIATION
ACTIVITIES**

The mediation sessions (the "Mediation") shall consist of an initial joint session wherein informal presentations of not more than ____ hours each shall be made by [CONTRACTOR] and the Region. That joint session shall be followed by series of sessions conducted by the Neutral Mediator with the parties, both individually -- *i.e.*, in "caucus" -- and in joint session, as the Neutral Mediator deems appropriate for purposes of facilitating settlement discussions.

Although the nature of the Mediation to be undertaken shall be essentially facilitative, the parties, during their individual sessions with the Neutral Mediator, may opt to seek the Neutral Mediator's evaluation of the strengths and weaknesses of their respective positions in terms of the various elements of the contract dispute. It is recognized in this regard that the Mediation shall be a completely voluntary process and that at no time shall the Neutral Mediator have authority to impose a settlement on the parties. The substance of any discussions between the Neutral Mediator and representatives of an individual party during a caucus shall be maintained in confidence and shall not be shared with the representatives of the other party, unless authority to share such information is expressly provided to the Neutral Mediator to do so.

In preparing for the Mediation, the Neutral Mediator may request a party to produce and deliver to him (and to serve copies on the other party) further documentation, to the extent he determines such documentation has not already been provided and is reasonably needed for him to understand the issues presented and the respective positions of the parties.

6. Unless the parties agree otherwise, there shall be no stenographic record of the Mediation.

7. Should resolution not be achieved during the week of _____, the parties may agree to continue mediation efforts beyond that week, by telephone or otherwise.

8. All mediation efforts shall be terminated whenever one of the following occurs:

- (a) the execution of a settlement agreement by the parties;
- (b) the Neutral Mediator makes a written declaration to the parties and to the ODRA Director that further efforts at mediation are no longer worthwhile; or
- (c) a party makes a written declaration to the Neutral Mediator and to the ODRA Director that the mediation proceedings are terminated.

9. It is understood that, upon termination of the mediation efforts hereunder, the contract dispute shall proceed into the ODRA's Default Adjudicative Process. In that event, the Neutral Mediator shall not take part in that Process. Notwithstanding the commencement of the Default Adjudicative Process, however, the Neutral Mediator shall be authorized to continue informal ADR discussions with the parties while that Process is ongoing, to seek possible resolution of the contract dispute (or of individual claim items or issues) by means of an amicable settlement. The Confidentiality provision set forth below in Paragraph 11 shall govern any such informal discussions.

10. It is expressly understood that, should the matter proceed into the Default Adjudicative Process, the adjudicative record shall include, *inter alia*, [Examples: the Statement of Contract Dispute, the Region's Response thereto, the Dispute File and any Dispute File Supplement, the Audit Report and CONTRACTOR's Response thereto and any further documentation requested by and provided to the Neutral Mediator in advance of the Mediation other than settlement proposals].

11. CONFIDENTIALITY

a. Except as agreed otherwise, any written or oral information exchanged between the parties or their representatives during the course of and in furtherance of the mediation process hereunder are for settlement purposes only and are confidential pursuant to Rule 408 of the Federal Rules of Evidence and the Administrative Dispute Resolution Act of 1996, 5 U.S.C. §574, which shall apply in full to all such exchanges of information. Neither party shall disclose any statement made in connection with settlement discussions or the mediation process, nor any document created or exchanged in connection therewith, unless compelled to do so by law or court order. Further, neither may use, for any purpose other than for the pursuit of settlement hereunder, any such statement or document.

b. The parties further agree on behalf of themselves and their attorneys that none of them shall call upon or subpoena the Neutral in any legal or administrative proceeding of any kind to testify, or to produce any notes, files or documents in any way created in connection with the mediation process. In no event will the Neutral voluntarily testify on behalf of either party or third person.

c. The disclosure of any report, document, or information in the context of settlement discussions or otherwise in furtherance of settlement during the mediation process shall not constitute a waiver of any applicable privilege. Both parties to the agreement reserve the right to contest the assertion of any privilege by the other party to the agreement, but will not argue that the disclosing party, by virtue of the disclosures it makes pursuant to this agreement, has waived any applicable privilege.

d. Evidence otherwise admissible or discoverable shall not be rendered inadmissible or undiscoverable because of its use in the mediation process.

e. If a settlement is reached, any information created or exchanged in settlement discussions or during the mediation process may be used within the

parties' respective organizations in order to explain and document the settlement. Neither this agreement nor any settlement agreement will be confidential.

12. The Neutral Mediator shall interpret and apply the terms of this Alternative Dispute Resolution Agreement and the foregoing groundrules, insofar as such terms and groundrules relate to the Neutral Mediator's duties and responsibilities. All other terms and groundrules shall be interpreted and applied by the ODRA Director.